

MEMORANDUM TO: All Members of the Metropolitan Council

FROM: Donald W. Jones, Director  
Metropolitan Council Office

DATE: **May 16, 2006**

RE: **Analysis Report**

Balances As Of:	<u><b>5/10/06</b></u>	<u><b>5/11/05</b></u>
<u>GSD 4% RESERVE FUND</u>	*\$1,629,890	\$12,393,245
<u>CONTINGENCY ACCOUNTS</u>		
GSD	- 0 -	- 0 -
USD	\$50,000	\$50,000
<u>GENERAL FUND</u>		
GSD	\$26,413,198	\$28,765,661
USD	\$8,770,800	\$5,003,020
<u>GENERAL PURPOSE SCHOOL FUND</u>	\$17,566,775	\$25,250,424

\* Assumes estimated revenues in fiscal year 2006 in the amount of \$1,242,571

## – RESOLUTIONS –

**RESOLUTION NO. RS2006-1244** (TYGARD, DOZIER & OTHERS) – This resolution appropriates \$1.8 million from the unappropriated fund balance of the general fund of the general services district to Nashville Alliance for Public Education, Inc., to provide funding for the purchase of technology and science equipment for use in public schools. Nashville Alliance for Public Education, Inc., is a 501(c)(3) nonprofit organization with the mission of raising money for Metro public schools.

In February 2006, the council approved the assignment of the Renaissance Hotel lease. As part of the lease assignment, the Metropolitan Government received a twenty percent share of the anticipated profit from the assignment, which resulted in a payment to Metro of \$2,234,000. This resolution relies on this share of the profit from the assignment to bolster the unappropriated fund balance of the general fund of the GSD to fund this appropriation. However, the director of finance has stated that he has been advised by the legal department that this appropriation would violate an ordinance enacted by the council in 1990, which requires that such funds go to the Metropolitan Development and Housing Agency (MDHA) for affordable housing opportunities and economic development activities. In addition, the director of finance states that the department of law has raised concerns that this appropriation may violate the Charter prohibition requiring that the general funds of the Metropolitan Government be kept separate from the schools, and that it may violate state laws granting the sole authority to the school board for determining how school funds are to be expended. Therefore, the director of finance has refused to certify that funds are available for this appropriation. A copy of the director of finance's memorandum is attached to this analysis.

The Council Office would point out that not all of the required documentation has been provided in order for Nashville Alliance for Public Education, Inc., to be eligible to receive grant funding from the Metropolitan Government. The Metropolitan Code of Laws requires that certain information be provided by nonprofits prior to receiving grant funds from Metro. This includes a copy of the organization's charter, a copy of the letter from the Internal Revenue Service certifying that the agency is tax exempt, a copy of the organization's audit, a statement of the proposed use of funds, and the proposed budget for the organization. A proposed budget and statement of the proposed use of funds has yet to be provided.

**RESOLUTION NO. RS2006-1259** (MCLENDON & WALLS) – This resolution appropriates \$30,000 in grant funds from the state department of health to the Metropolitan board of health for the characterization of ambient concentrations of hazardous air pollutants. The Metro health department is responsible for air quality monitoring within Nashville and Davidson County on behalf of the U.S. environmental protection agency (EPA). A grant award of \$419,480 has already been accepted by the health department and the funds were appropriated by the Council to the health department as part of the fiscal year 2006 budget ordinance. The EPA has awarded an additional \$30,000 for this program, which requires action by the council to appropriate the additional money to the health department.

This resolution should be considered by the council after the adoption of Resolution No. RS2006-, which approves the amended grant.

**RESOLUTION NOS. RS2006-1303 & RS2006-1304** (FOSTER) – These two resolutions provide proposed amendments to the Metropolitan Charter regarding the establishment of an independent

audit department and term limits for the office of mayor. These two charter amendments, along with a proposed amendment reducing the size of the council to twenty members, were proposed by the mayor and submitted to the charter revision commission. The charter revision commission unanimously recommended these two amendments to the council, but did not recommend reducing the size of the council.

**Resolution No. RS2006-1303** proposes to amend the Charter to create an independent division of audit for the Metropolitan Government. The metropolitan auditor would be selected from a list of three persons recommended by the audit committee, and would be subject to confirmation of the council. The metropolitan auditor would serve a term of eight years and could be removed for cause by the audit committee. The auditor is to be knowledgeable in government finance and must have an understanding of the Generally Accepted Accounting Principles, Government Auditing Standards Board (GASB) standards. In addition, the auditor must have at least five years experience as a financial officer of a government or business.

This Charter amendment also codifies in the Charter the establishment of the audit committee, which was created by resolution of the council in 1991. The audit committee consists of the vice mayor, two members of council, one member selected by the Nashville Area Chamber of Commerce, and one member selected by the Nashville Chapter of the Tennessee Society of Certified Public Accountants. This Charter amendment would add two additional members to the audit committee that would be appointed by the mayor. In addition, the director of finance would be formally added to the committee by virtue of his official position.

**Resolution No. RS2006-1304** provides a proposed amendment to the Metropolitan Charter to clarify that the office of mayor is limited to two consecutive terms. When the Charter was adopted in 1963, the office of mayor was limited to three consecutive four-year terms. The office of mayor was the only office that was term-limited by the Charter. In 1994, the Charter was amended by petition and referendum election to provide that all elected offices created by the Charter, except general sessions judges, are limited to two consecutive four-year terms. However, the 1994 Charter amendment initiated by the citizens did not specifically repeal the Charter provision related to the term limit for the office of mayor. Therefore, a question remains as to whether the later term limit provision trumps the prior term limit provision regarding the office of mayor, or whether the office of mayor continues to have a term limit of three consecutive terms. Although the department of law has opined that the mayor is not limited to two terms, Mayor Purcell has chosen not to pursue a third term and has recommended to the Charter revision commission that the office of mayor be limited to two terms. A similar proposed Charter amendment was deferred indefinitely by the council in July 2005.

The council, pursuant to the Charter, may only adopt two resolutions during the term of the council that submit amendments to the voters for ratification. Each proposed amendment to the Charter must be adopted by 27 affirmative votes of the council, and the resolution itself submitting the amendment must be adopted by 27 affirmative votes in order to become effective. These resolutions provide that the date for holding the referendum election on the Charter amendments is to be the August 3, 2006 general election. The Charter provides that resolutions proposing amendments to the Charter must be filed at least 80 days prior to the election. State election law provides that (continued on next page)

**RESOLUTION NOS. RS2006-1303 & RS2006-1304** (continued)

resolutions requiring the holding of elections on questions submitted to the people must be which are to be held at the regular election must be filed with the election commission not less than 60 days prior to the August election. State law further provides that the resolution must be adopted between 45 and 60 days prior to the election. Thus, if the council desires to have these matters placed on the August 3<sup>rd</sup> ballot, these resolutions should be deferred and acted upon at the June 6 Council meeting. In addition, sponsors of previously deferred Charter amendments that are interested in having the council consider the amendments in time for the August 3 general election should notify the Metropolitan clerk not later than 4:00 p.m. on Tuesday, May 30, 2006.

The August 3<sup>rd</sup> election is the first election at which the new federally mandated touch screen voting machines will be used. In light of the new voting machines, as well as the extraordinarily large number of items already on the ballot, the council office recommends deferring these resolutions and bringing them back up in time for the November election.

**RESOLUTION NO. RS2006-1305** (MCCLENDON) – This resolution authorizes the issuance of general obligation bonds in an amount not to exceed \$203,780,000 to retire outstanding commercial paper issued by the Metropolitan Government for various capital projects. In 2003, the council approved the use of commercial paper in place of bond anticipation notes and capital outlay notes to provide short-term financing for capital projects. This resolution approves the issuance of general obligation bonds to retire the outstanding commercial paper that is to mature within 90 days after the delivery of the bonds. All of the projects to be funded by these bonds have already been approved by the council as part of the mayor's previous capital spending plans. Some of the projects that were temporarily funded with commercial paper include sidewalks, the new courthouse parking garage, renovation of the existing courthouse, construction of the A.A. Birch criminal court building, implementation of the schools and parks master plans, new construction and upgrades to the Fulton complex (formerly the Howard Office complex), and bridge and roadway maintenance projects.

This resolution also makes a technical modification to Resolution No. RS2006-1269, approved by the council in April 2006, which authorized the issuance of refunding bonds to refinance the stadium debt. This technical modification merely changes the time of day for which the daily interest rate on the variable bonds is to be determined.

In addition to retiring approximately \$140 million in commercial paper, the bond resolution approves the issuance of \$60 million in new debt to fund projects approved by the council as part of previous capital spending plans submitted by the mayor. This \$60 million is being sent directly to the bond market rather than taking out commercial paper prior to the issuance of the bonds. Although this is considered "new money" in the bond resolution, it is important to note that this is to finance capital projects, such as the courthouse renovation and various schools projects, already approved by the council in previous initial bond resolutions.

These bonds are supported by the full faith and credit of the Metropolitan Government, and the debt will be paid from the USD and GSD debt service funds. There will be a substitute resolution that awards the bonds to the bidder with the lowest true interest cost to the Metropolitan Government.

**RESOLUTION NO. RS2006-1306** (JAMESON) – This resolution approves a fifth amendment to a lease agreement between the Metropolitan Government and W.S. Holdings, L.P., for the lease of office space in the Washington Square building. Metro is currently leasing 40,222 square feet of

space in the Washington Square building for the district attorney's office at an annual cost of approximately \$500,000. The current lease agreement is set to expire on November 30, 2008. The purpose of this lease agreement is to allow Metro to install a satellite dish on the roof of the Washington Square building. Metro will install the satellite dish at its own expense, and will be required to relocate the dish upon 30 days notice.

This lease amendment has been approved by the planning commission.

**RESOLUTION NO. RS2006-1307** (WALLS & MCCLENDON) – This resolution approves a grant in the amount of \$5,000 from Forensic Medical Management Services, PLC (FMMS) to the board of health for a professional evaluation of services provided by the operator of the medical examiner's office. In 1997, the Metropolitan Government privatized the medical examiner's office for Metro Government and entered into a management contract with FMMS to operate the medical examiner's office and to employ a forensic pathologist who would be eligible to be appointed as the Metro medical examiner. Dr. Bruce Levy is the designated medical examiner for Metro and is the chief medical examiner and president of FMMS. In 2000, the council approved a lease agreement with FMMS for the Forensic Science Center owned by the Metropolitan Government located at the former General Hospital site.

The purpose of this grant is to pay Metro's bond counsel to provide a legal opinion as to circumstances under which FMMS may use the medical examiner's facilities located at 850 R.S. Gass Boulevard to provide private autopsy services when not engaged in providing Metro medical examiner services. Since this is a public facility that was built using general obligation bonds, an opinion is needed from bond counsel as to whether this private activity can take place at the facility. According to Dr. Levy, FMMS only performs approximately 30 private autopsies each year and does not market this service.

**RESOLUTION NO. RS2006-1308** (WALLS & MCCLENDON) – This resolution approves a grant from the Campus for Human Development to the Metropolitan board of health for services to homeless persons at the downtown clinic. These funds will be used to pay the salaries of two case managers in the substance abuse treatment program and one dental assistant. The total cost of funding these three positions is \$146,395, 80% of which will be reimbursed by the Campus for Human Development, plus administrative costs not to exceed \$4,242. The term of this grant is from September 1, 2005 through August 31, 2006.

**RESOLUTION NO. RS2006-1309** (WALLS & MCCLENDON) – This resolution approves an amendment to a grant from the U.S. environmental protection agency (EPA) to the Metropolitan board of health for the characterization of ambient concentrations of hazardous air pollutants. The Metro health department is responsible for air quality monitoring within Nashville and Davidson County on behalf of the U.S. environmental protection agency (EPA). The original grant award was in the amount of \$419,480. This amendment increases the amount of the grant by \$30,000 for a new grant amount of \$449,480. Resolution No. RS2006-1259 appropriates the additional \$30,000 amount for this grant to the health department.

**RESOLUTION NO. RS2006-1310** (WALLS & MCCLENDON) – This resolution approves a grant agreement between the Metropolitan board of health and Oasis Center for community prevention intervention services. Pursuant to this contract, Metro will provide \$40,000 to Oasis Center to provide

community intervention prevention services to at-risk sixth graders at John Early Paideia Magnet Middle School. Oasis Center will use their Teen Outreach Curriculum based upon a national model to provide these services. The term of the grant is from January 1, 2006 through June 30, 2006.

**RESOLUTION NO. RS2006-1311** (MURRAY, ISABEL & OTHERS) – This resolution approves a grant in the amount of \$610,500 from the state department of transportation to the department of public works for the resurfacing of Cowan Street. This is a typical grant agreement with the state for roadway projects whereby the state pays 75% of the costs and Metro pays the remaining 25%. Metro's share of the project costs will be \$203,500. These grant funds will be used to remove the existing road surface and to resurface approximately 1.4 miles of Cowan Street from Spring Street to Baptist World Center Drive. This roadwork is to be completed by July 31, 2008.

**RESOLUTION NO. RS2006-1312** (MCCLENDON) – This resolution approves a grant in the amount of \$22,440 from Vanderbilt University to the Nashville career advancement center (NCAC) for planning and implementation of a School to Career program for youth. Vanderbilt has received grant funds from the Jim Casey Youth Opportunities Initiative, Inc., for this project. Vanderbilt in turn is subcontracting a portion of the work to NCAC. Pursuant to this grant, NCAC staff will provide services to young people coming of age in the foster care system to help them gain the skills they need to engage in the workforce and secure employment. The term of this grant is from January 1, 2006, through June 30, 2006.

**RESOLUTION NO. RS2006-1313** (WALLACE) – This resolution appropriates \$3,000 from the general fund reserve fund (4% fund) for the purchase and installation of a card key access lock at the rear door of the council chamber. Four percent funds may only be used for the purchase of equipment and repairs to buildings.

The council office would point out that the division of real property services of the finance department has indicated that the council will be relocating to the newly renovated courthouse in September of this year. Thus, this card key access lock would only be used for a few months. The new council chamber is being designed to provide more security for members of council than the current temporary facility.

**RESOLUTION NO. RS2006-1314** (MCCLENDON) – This resolution authorizes the department of law to accept \$10,150.03 in settlement of the Metropolitan Government's claim against Vattakkattil Ashokan. On May 16, 2005, Suseela Somarajan was driving a vehicle owned by Mr. Ashokan when she pulled in front of a Metro police motorcycle at the intersection of Old Hickory Boulevard and Sonya Drive. The police officer was unable to stop and collided with Mr. Ashokan's vehicle. The officer suffered a back injury as a result of the accident, incurring medical bills in the amount of \$6,994.66 and lost wages in the amount of \$3,155.37. The department of law recommends settling this claim for \$10,150.03, which consists of the medical bills and lost wages paid by the Metropolitan Government. Metro has already recovered \$2,482.84, which was the full cost to repair the 2003 Harley Davidson police motorcycle.

**RESOLUTION NO. RS2006-1315** (MCCLENDON) – This resolution authorizes the department of law to accept \$11,984.03 in settlement of the Metropolitan Government's claim against Suprena Gear. On July 25, 2005, Ms. Gear was traveling southbound on Briley Parkway attempting to merge

onto I-40 when she struck a Metro police motorcycle. The 2003 Metro Harley Davidson Motorcycle sustained damages totaling \$6,093.15. The police officer sustained head, back and elbow injuries as a result of the accident. The Metropolitan Government incurred expenses totaling \$5,890.88 for medical bills and lost wages paid on behalf of the injured officer.

The department of law recommends settling this claim for \$11,984.03, which consists of the following:

- \$6,093.15 in damage to the police motorcycle
- \$1,162.11 lost wages
- \$4,728.77 in medical bills

**RESOLUTION NO. RS2006-1316** (MCCLENDON & DOZIER) – This resolution authorizes the department of law to accept \$12,042.00 in settlement of the Metropolitan Government’s claim against Randolph Wachs. On October 13, 2005, Mr. Wachs was traveling east on Highway 70 South when he turned in front of a Metro police car striking the left side of the Metro vehicle. The investigating officer determined that Mr. Wachs failed to yield the right-of-way and was driving under the influence of alcohol. The 2004 Chevrolet Impala police car, valued at \$12,042.00, was a total loss. The department of law recommends settling this claim for the full replacement value of the Metro vehicle.

The Metro officer was injured as a result of this accident, and Metro’s claim for medical bills and lost wages will be addressed at a subsequent date.

**RESOLUTION NOS. RS2006-1317 THROUGH RS2006-1319** – These three resolutions authorize aerial encroachments above sidewalks. Ordinance No. O87-1890 allows such aerial encroachments to be approved by resolution of the council rather than ordinance. The applicants have agreed to indemnify the Metropolitan Government from all claims in connection with the installation and maintenance of the encroachments, and are required to provide a \$300,000 certificate of public liability insurance naming the Metropolitan Government as an insured party. These resolutions have been approved by the planning commission.

**Resolution No. RS2006-1317** (Hausser) authorizes West End Restaurants to install and maintain a metal canopy extending ten feet above and three feet over the sidewalk at 3000 West End Avenue.

**Resolution No. RS2006-1318** (Jameson) authorizes Stahlman Redevelopment Partners to install flags over the sidewalk on Third Avenue North and Union Street at the Stahlman building. These flags will measure 5 feet by 8 feet and will extend 22 feet above the sidewalk at a 33 degree angle.

**Resolution No. RS2006-1319** (Jameson) authorizes Austin’s Hallmark to install and maintain an awning over the store space at 235 5<sup>th</sup> Avenue North.

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**- BILLS ON SECOND READING -**

**ORDINANCE NO. BL2005-922** (DOZIER) – This ordinance amends the Metropolitan Code of Laws to provide for reimbursement of customer overpayments for water and sewer services. The Metro Code sections regarding water rates and charges provide for the classification of customers into four classes for the purpose of billing. These four classes are described as follows:

1. Residential – Up to 2 housing units on a common meter
2. Small commercial – Up to 1,600 cubic feet per month
3. Intermediate commercial and industrial – 1,600 to 200,000 cubic feet per month
4. Large commercial and industrial – Over 200,000 cubic feet per month.

Pursuant to this ordinance, if the director of water and sewerage services determines that a customer has been overcharged because of an inaccurate classification, based upon the previous 12-month water usage period, then the customer shall be reimbursed for the overpayment. The reimbursement would be for a period of 36 months prior to the date the error was discovered, unless a certain date for the error can be established that is less than 36 months prior to the discovery date. A similar ordinance was withdrawn by the council in 2003.

The council office would point out that this ordinance would apply retroactively, meaning that reimbursements would have to be made for any overcharge that occurred prior to the effective date of this ordinance. The council office and the department of law have raised concerns regarding whether such a retroactive provision is authorized under Tennessee law. As a result of the retroactive application of this ordinance, the director of finance has refused to certify the availability of funds. A copy of the finance director's letter is attached to this analysis.

Pursuant to Rule 22 of the Council Rules of Procedure, if this ordinance is deferred again it is deemed withdrawn and is to be permanently removed from the agenda.

**ORDINANCE NO. BL2006-998** (WALLACE & RYMAN) – This ordinance amends the Metropolitan Code of Laws to prohibit any temporary or permanent encroachment in the public right-of-way without a permit from Metro. The Code currently technically prohibits persons from placing encroachments into the right-of-way except when permitted by Metro. The Code provides that the council may grant encroachments within the right-of-way by ordinance, and may grant aerial encroachments over the right-of-way by resolution. However, the ordinance does not define the term "encroachment". Thus, an argument can be made that temporary encroachments, such as news racks, do not require a permit from Metro.

This ordinance would require that a permit be obtained from Metro for all permanent or temporary encroachments in the right-of-way, including signs, sandwich boards, vegetation, news racks, fences, and walls. Any person or entity requesting such an encroachment would be required to pay a permit fee of \$100 to Metro, and must provide a public liability insurance policy in an amount directed by the department of law holding Metro harmless from claims or damages arising from the installation or maintenance of the encroachment.

**ORDINANCE NO. BL2006-1015** (MCCLENDON) – This ordinance would allow the Metropolitan Government to accept donations valued at less than \$5,000 without council approval, and would allow the acceptance of donations in excess of \$5,000 upon council approval by resolution. Certain  
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**ORDINANCE NO. BL2006-1015** (continued)

Metro departments and boards, such as the health department, the board of parks and recreation, and the library, have the authority to accept donations without council approval. However, donations to all other departments, such as police and fire, must be approved by ordinance.

Ordinance No. BL2002-1186 was enacted by the council several years ago to allow grants to be approved by resolution. This ordinance essentially expands this ability to include donations over \$5,000. Further, the council would no longer be required to approve donations valued at less than \$5,000. From time to time, donations of a nominal value are made to various Metro departments. In most cases, the value of the employee time in preparing and filing the legislation exceeds the value of the donation. This ordinance would allow for the expedited acceptance and use of the donations.

There is a proposed amendment that would allow all donations under \$5,000 to be approved by resolution. All donations in excess of \$5,000 would have to be approved by ordinance.

**ORDINANCE NO. BL2006-1016** (DREAD) – This ordinance amends the Metropolitan Code of Laws to require after hours clubs to obtain a permit from the beer permit board. According to documentation prepared by the police department, 563 calls for police assistance were answered at after hours establishments between January 1, 2004 and December 31, 2005. However, after hours clubs are not regulated by any Metro agency unless they serve beer or are considered sexually oriented businesses. Therefore, it is difficult for police and other Metro agencies to make sure these clubs are being operated in a safe manner.

This ordinance essentially incorporates after hours establishments into the regulations governing dancehalls. The Code currently requires that all dancehalls obtain a permit from the beer permit board in order to operate. By broadening these regulations to include after hours clubs, such establishments would have to submit an application to the beer permit board, along with a \$500 application fee, indicating the name of the applicant, name and location of the business, and the name of any person or entity having at least a five percent ownership interest in the establishment. There would be a \$100 renewal fee for the permit. The ordinance defines “after hours establishment” as a commercial establishment open to the public after 3:00 a.m. that allows customers to bring alcoholic beverages onto the premises.

Pursuant to this ordinance, no permit could be issued for any after hours establishment if any person having at least a five percent ownership interest in the establishment has been convicted during the past five years of a crime of moral turpitude. The beer permit board defines a crime of moral turpitude as being murder, any sex crime, the sale of illegal drugs, and embezzlement. In addition, it would be unlawful for an after hours establishment to allow any indecent or violent act to occur on the premises, or to allow persons under the age of twenty-one to consume alcohol on the premises. Failure by a permit holder to abide by this provision would make the permit holder strictly liable for property damage or injury caused by anyone under the age of twenty-one that was consuming alcohol on the premises. After hours establishments would also be responsible for providing licensed security guards to patrol the premises. The ordinance grants the authority to the beer permit board to adopt rules and regulations to effectuate the purpose of the law and to secure compliance.

There is a substitute for this ordinance that makes various technical modifications to some of the language suggested by the department of law.

**ORDINANCE NO. BL2006-1050** (FOSTER) – This ordinance amends the Metropolitan Code of Laws to require Metropolitan Government boards and commissions to publicly announce at each meeting the timeframe for appealing a decision of the board or commission. Each board and commission would be required to make a standard announcement approved by the department of law that informs the public as to the process and timeframe for appealing a decision. The announcement is to advise persons interested in appealing a decision to seek the advice of independent counsel to ensure that the appeal is filed in a timely manner and that all procedural requirements have been satisfied.

**ORDINANCE NO. BL2006-1052** (MCCLENDON & TOLER) – This ordinance approves a licensing agreement with the Nashville and Eastern Railroad Corporation for the purpose of installing fiber optic cable and PVC pipe in the railroad right-of-way at mile marker 3.11 and 3.24 for the benefit of the department of water and sewerage services. The license would be in perpetuity, provided however, that the agreement may be terminated by either party upon 90 days written notice, and Metro would be required to remove the cable and pipe from the railroad right-of-way. Metro is required to pay a one-time fee of \$270.00 to cover the railroad's costs in preparing the agreement.

Metro agrees to indemnify the railroad, to the extent it legally may, for claims or injuries arising from the installation and maintenance of the water main. Metro, or its contractor, will also be required to maintain a \$2,000,000 certificate of public liability insurance. License agreements with railroads are typically the only contracts in which Metro agrees to provide a certificate of liability insurance, especially since Metro can require the contractor actually performing the installation work to maintain the insurance. Metro has several similar licensing agreements with Nashville and Eastern Railroad.

**ORDINANCE NO. BL2006-1053** (RYMAN & DOZIER) – This ordinance names fire station No. 39 located at 1247 South Dickerson Road the "B.R. Hall, Sr. Station". The Metro Code of Laws provides that no building of the Metropolitan Government may be named except pursuant to an ordinance enacted by the council. B.R. Hall, Sr. recently retired from the Nashville fire department after almost 33 years of service. Mr. Hall was hired in 1973 and was promoted to captain in 1988. During his years with the fire department, Mr. Hall served the I.A.F.F. Local 140 Union as the secretary/treasurer, second vice president, and ultimately president from 1983 to 1992 and from 1994 to 2006. In addition, Mr. Hall served as the fire department's representative on the benefit board from 1985 to 2006. A biographical sketch of Mr. Hall is attached to the legislation, as required by the Metropolitan Code of Laws.

**ORDINANCE NO. BL2006-1054** (JAMESON & RYMAN) – This ordinance amends the Metropolitan Code of Laws to change the definition of "disability" as it relates to disability pensions for Metro employees. Under the current code, if an employee's termination occurs because of a permanent disability while he is a fireman or policeman, or while in the line of duty (for all other Metro employees), the employee is deemed to be "disabled" if he/she is unable during a two year period following the disability to perform the duties of any occupation in the Metropolitan Government which is offered at a salary that is equal to or higher than he/she was receiving at the time of the disability. After the two year period, the person is deemed to be disabled if he/she is unable to perform any job, whether with the Metropolitan Government or not, at a salary that, when added to the disability payments, would result in total income that is greater than his/her frozen earnings at the time of disability. Police officers and firefighters are considered disabled if they can no longer perform the (continued on next page)

**ORDINANCE NO. BL2006-1054** (continued)

duties of a police officer or firefighter. Any employee whose termination occurs because of a disability that is not related to an in-line-of-duty injury, and who is not a policeman or fireman, is deemed disabled if he/she becomes permanently disabled as a result of an injury, disease, or mental disorder so that he/she is unable during the continuation of the disability to perform any job, whether with the Metropolitan Government or not, at a salary that, when added to the disability payments, would result in total income that is greater than his/her frozen earnings at the time of disability.

The primary purpose of this ordinance is to clarify that employees are disabled if they are unable to work at a Metro job at the same or greater salary than at the time they became disabled. Disability pensioners would no longer be required to show that they could not work anywhere. To accomplish this, the ordinance makes the following changes to the definition of "disability":

1. The words "permanently disabled" are removed.
2. The two year time period distinction is removed from the definition of "disability", to conform to the prior interpretation given by the employee benefit board. Thus, a policeman or fireman, or another Metro employee injured in the line of duty, would be deemed disabled if during the continuation of the disability he/she was unable to perform the duties of any job within the Metropolitan Government at a rate of pay equal to or higher than he/she was making at the time of the disability. After reviewing the continuing disability, such person would be deemed disabled if it is determined that they are unable to engage in any occupation within the Metropolitan Government at a salary that, when added to the disability payments, would result in total income that is greater than his/her frozen earnings at the time of disability.
3. For Metro employees, other than police officers or fire fighters, that suffer a disability as a result of a disease or injury not occurring in the line of duty, such employees will be deemed disabled if they are incapable of engaging in any occupation in the Metropolitan Government which is offered at a rate of earnings that, when added to the disability payments, would result in total income that is greater than their frozen earnings at the time of disability.

Pursuant to Rule 36 of the Council Rules of Procedure, any legislation that affects the Metro pension plan must have an actuarial study before the matter can be considered by the council. The study and formulating committee has recommended this change in the definition of disability, and an actuarial study determination of the cost of the changes has been made. The employee benefit board unanimously approved this change in the definition of disability.

**ORDINANCE NO. BL2006-1055** (WILHOITE, FORKUM & COLEMAN) – This ordinance accepts a donation of approximately 25 acres of property located at 136 Una Recreational Park Drive for the benefit of the department of parks and recreation. This property is being donated by Una Recreational Center, Inc., at no cost to the Metropolitan Government. The board of parks and recreation has recommended that the Metropolitan Government accept this property.

**ORDINANCE NO. BL2006-1056** (TOLER) – This ordinance authorizes the Metropolitan Government to enter into an agreement with and CSX Transportation, Inc. and Beazer Homes Corporation for the construction and acceptance of a new bridge across the CSX railroad tracks in the Bellevue area. Pursuant to the agreement, Beazer Homes agrees to construct the bridge at its own expense and to reimburse CSX for any costs it incurs as a result of the bridge project, such as (continued on next page)

**ORDINANCE NO. BL2006-1056** (continued)

equipment, materials, and CSX labor in connection with the supervision of the project. Beazer Homes and its contractor will be required to maintain liability insurance to comply with CSX's and Metro's requirements. Beazer Homes will also be required to provide a performance bond acceptable to CSX and Metro to secure performance of Beazer's obligations under the agreement.

Once the bridge is completed and is deemed to be in compliance with the plans and specifications, the agreement provides that Metro will accept title to the bridge from Beazer Homes and will assume all maintenance obligations for the bridge. Once the bridge is accepted it should be included as part of the street and alley maintenance and acceptance map that is submitted to the council annually for adoption.

This ordinance has been approved by the planning commission.

**ORDINANCE NOS. BL2006-1057 & BL2006-1058** – These two ordinances abandon portions of Metro Government rights-of-way that are no longer needed for governmental purposes. Metro will retain all easements encumbering these areas. These ordinances have been approved by the planning commission and the traffic and parking commission.

**Ordinance No. BL2006-1057** (Ryman) abandons a 790-foot portion of Douglas Road right-of-way. This closure has been requested by Kitty Harvill, the owner of the property at the end of the portion of roadway being abandoned. This section of Douglas Road is only used as a driveway for Ms. Harvill's property, which is the only parcel affected by this closure.

**Ordinance No. BL2006-1058** (Dread & Jameson) abandons a portion of unnamed right-of-way between Cargile Road and Haverford Drive. This section of roadway was platted but was never built. This right-of-way abandonment has been requested by James Holt, Jr., of the Holt Southeast Corporation, an adjacent property owner. Consent of the affected property owners is on file with the department of public works.

**ORDINANCE NOS. BL2006-1059** (JAMESON) – This ordinance renames the portion of Franklin Street between 1<sup>st</sup> Avenue South and 4<sup>th</sup> Avenue South as "Gateway Blvd". This name change was requested by the department of public works now that the extension of Gateway Boulevard has been completed.

The council office recommends that this ordinance be amended to spell out the name "Boulevard", and that future legislation submitted by the department of public works avoid the use of abbreviations for street names.

This ordinance has been approved by the planning commission and the ECD board.

**ORDINANCE NOS. BL2006-1060** (GREER) – This ordinance renames P Pool Avenue, between Elm Hill Pike and Transit Avenue, as "Lannie Boswell Avenue". A biography of Lannie Boswell, who lived from 1890 to 1974, is attached to the legislation.

This ordinance has been approved by the planning commission and the ECD board.

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**- BILLS ON THIRD READING -**

**ORDINANCE NO. BL2006-999** (SUMMERS & WILLIAMS) – This zoning text change would require the board of zoning appeals (BZA) to provide a copy of the planning commission staff report on a special exception to the applicant at least 48 hours prior to the hearing. The zoning code currently requires the planning department to review all special exception requests and to provide the BZA with a report regarding land uses in the general vicinity of the proposed special exception use. The report is provided to the BZA at least one week prior to the meeting at which the special exception request is to be heard.

This ordinance would require the BZA to give the applicant for the special exception a copy of the report upon request at least 48 hours before the public hearing on the request. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2006-1011** (WALLACE & RYMAN) – This ordinance abandons Alley #234 from the intersection of Division Street and Music Circle East around five parcels of property and back to Music Circle East. This closure has been requested by Littlejohn Engineering Associates on behalf of the property owners. There is no future governmental need for this portion of right-of-way, and the Metropolitan Government will retain all easements. This ordinance has been approved by the planning commission and the traffic and parking commission.

The council office has been informed that there is an issue as to whether one of the affected property owners has consented to this alley closure. If an affected property owner has not consented, then, pursuant to Rule 18, this ordinance cannot be enacted until such consent is obtained.

**ORDINANCE NO. BL2006-1012** (RYMAN) – This ordinance amends the Metropolitan Code of Laws to require the purchasing agent to submit a monthly report to the council regarding all procurement contracts awarded during the previous month. This report is to contain the following information:

1. The name of the contractor or vendor to whom the contract was awarded.
2. The total amount of the contract.
3. The payment terms of the contract.
4. A description of the goods and/or services to be provided.
5. The name of all other bidders/offers, and the amount of each bid or offer.

The Code currently requires that procurement records be open to the public for inspection. Information about a particular procurement is open once the bid has been evaluated.

**ORDINANCE NO. BL2006-1013** (TYGARD, CRADDOCK & GOTTO) – This ordinance, as amended, would require that all procurement contracts for goods or services with an annual payment of more than \$500,000, or an aggregate total payment of more than \$3 million over the life of the contract, and which are awarded to a contractor other than the lowest bidder, be approved by resolution of the council. Contracts for professional of consulting services would be exempt from this ordinance. The Code provides that professional services contracts, which include legal services, medical services, accounting services, fiscal agents, financial advisors, architects, and engineers, be awarded on the basis of “recognized competence and integrity”, not based on the lowest cost to Metro. This ordinance also would exempt contracts awarded to minority or disadvantaged businesses, or to other businesses whose proposal was higher due to their use of minority subcontractors.

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**ORDINANCE NO. BL2006-1013** (continued)

As provided in Chapter 4.12 of the Metropolitan Code of Laws, the Metropolitan Government procurement system is based upon competitive sealed bidding and competitive sealed proposals. Competitive bidding is used for the procurement of most tangible goods, where an apples-to-apples comparison can be made between vendors selling an identical product. Under the competitive bid system, the contract is awarded to the bidder that can supply the goods at the lowest cost to Metro. On the other hand, when the purchasing agent determines that the use of competitive bidding is either not practicable or advantageous to the Metropolitan Government, a contract may be entered proposals where factors in addition to price are considered. While the awarding of most contracts is at the discretion of the purchasing agent, the Code currently requires that contracts for the collection and disposal of solid waste with a contract amount in excess of \$500,000 and contracts for the privatization of government services be approved by resolution of the council.

This ordinance was filed in response to press reports about the intent to award a contract for security services at Metro facilities to Wackenhut Corp., whose bid was approximately \$900,000 more per year than the other qualified bidders. The entire RFP has subsequently been rescinded by the purchasing agent and a new RFP process will be initiated.

The council office would point out that the adoption of this ordinance could have serious implications on the Metropolitan Government. This ordinance could result in work stoppages on construction projects where change orders increase the contract amount above the \$3 million threshold. Such delays would likely inconvenience the public and may compromise public safety.

The council office would also remind members of council that the Charter grants the responsibility for the procurement of government goods and services to the purchasing agent. Adoption of this ordinance could be deemed to be an unlawful attempt by the council to remove authority given to the purchasing agent by the Charter. While the Code does require that privatization and solid waste contracts be approved by the council, these are related to policy issues that directly impact employees and services provided by the Metropolitan Government.

The department of law has opined that the amendment excluding contracts awarded to disadvantaged businesses from this ordinance is unconstitutional because it affords preferential treatment to minorities and women-owned businesses. Therefore, if the council enacted this ordinance, it would not be enforced by the purchasing agent since he cannot act in a manner contrary to the advice of the director of law.

**ORDINANCE NO. BL2006-1017** (MCCLENDON) – This ordinance approves a contract between the Metropolitan police department and the University of Massachusetts to provide reporting services in conjunction with a federally-funded research project conducted by the university. Pursuant to this contract, the police department will be paid \$9,268.80 to collect and photocopy incident, arrest, and supplemental reports on domestic violence cases for research conducted under the federal grant.

**ORDINANCE NO. BL2006-1018** (LORING, TOLER & MCCLENDON) – This ordinance approves a licensing agreement with the Nashville and Eastern Railroad Corporation for the purpose of installing fiber optic cable above and across the railroad right-of-way at mile post 3.29. The license would be in perpetuity, provided however, that the agreement may be terminated by either party upon six months written notice, and Metro would be required to remove the line from the railroad right-of-  
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**ORDINANCE NO. BL2006-1018** (continued)

way. Metro will pay an annual license fee of \$186.00 subject to increases every three years based on the national consumer price index average. In addition, Metro is required to pay a one-time fee of \$270.00 to cover the railroad's costs in preparing the agreement. Metro agrees to indemnify the railroad, to the extent it legally may, for claims or injuries arising from the installation and maintenance of the line. Metro, or its contractor, will also be required to maintain a \$2,000,000 certificate of public liability insurance. License agreements with railroads are typically the only contracts in which Metro agrees to provide a certificate of liability insurance, especially since Metro can require the contractor actually performing the installation work to maintain the insurance.

This ordinance further provides that any future overhead cable agreements with Nashville & Eastern Railroad may be approved by resolution of the council.

**ORDINANCE NOS. BL2006-1019 & BL2006-1020** – These two ordinances declare Metropolitan Government-owned property located in the 19<sup>th</sup> council district to be surplus and authorizes the director of public property administration to sell the property in accordance with the standard procedures for the disposition of surplus property. The proceeds of the sales will be credited to the general fund. These ordinances have been approved by the planning commission.

**Ordinance No. BL2006-1019** (Wallace) approves the disposition of property located at 1312 - 3<sup>rd</sup> Avenue North.

**Ordinance No. BL2006-1020** (Wallace & Ryman) approves the disposition of the following properties:

- 1701 McKinney Avenue
- 2409 Middle Street
- 1824 12th Avenue N.
- 1726 Delta Avenue
- 1632 Dr. D.B. Todd Jr. Blvd.
- 303 Taylor Street
- 1822 D. B. Todd Jr. Blvd.
- 1013 9th Avenue North
- 1410 Hynes Street

**ORDINANCE NO. BL2006-1021** (WHITE, TOLER & MCCLENDON) – This ordinance authorizes the director of public property administration to acquire easements by negotiation or condemnation in conjunction with intersection improvements at Dodson Chapel Road and Central Pike. A proposed right-of-way easement, slope easement, and temporary construction easement is to be acquired on two parcels of property located to the east side of Dodson Chapel Road. The estimated cost for the project, including the acquisition of right-of-way, signalization and engineering costs is \$257,000, which is to be paid from the public works traffic signal modification fund.

**ORDINANCE NOS. BL2006-1022 & BL2006-1023** – These two ordinances abandon portions of Metropolitan Government right-of-way that are no longer needed for government purposes. The Metropolitan Government will retain all easements. Consent of the affected properties is on file with the department of public works. These ordinances have been approved by the planning commission.

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**ORDINANCE NOS. BL2006-1022 & BL2006-1023** (continued)

**Ordinance No. BL2006-1022** (Jameson) closes alley #316 between South 11<sup>th</sup> Street and Alley #292. This closure has been requested by Martin Corner, LP.

**Ordinance No. BL2006-1023** (Greer) abandons a portion of Expressway Park Drive from Murfreesboro Pike northeastwardly approximately 220 feet. This portion of Expressway Park Drive has been relocated at the expense of Purity Dairies as part of the expansion to their facilities.

**ORDINANCE NO. BL2006-1045** (LORING & MCCLENDON) – This zoning text change amends the hillside development standards to allow the building envelope width to be as approved on all preliminary plats approved by the planning commission prior to March 1, 2006. The zoning code currently requires that the building envelope for lots with a twenty-five percent or greater natural slope (referred to as “critical lots”) have a minimum width of seventy-five feet at the building line. Although this provision has been in the zoning code since 1998, it has just recently started to be enforced by the planning department. As a result, developers who had preliminary plats approved showing critical lots with building envelope widths of less than seventy-five feet are now being told they need to revise their plats before obtaining final plat approval.

This ordinance would essentially “grandfather in” the building envelope widths for critical lots that were shown on preliminary plats approved prior to March 1, 2006. The planning commission has approved this ordinance, but has recommended several technical changes to the bill that are in keeping with the purpose and intent of the ordinance.

**ORDINANCE NO. BL2006-1046** (BRILEY) – This zoning text change would allow for reductions in minimum lot sizes for conservation subdivisions. The purpose of this ordinance is to provide developers with an incentive for conserving natural space. The zoning code currently allows for reductions in lot sizes equivalent to two smaller base zoning districts through the cluster lot option when at least fifteen percent of the land area is conserved. For example, a developer of RS15 property has the option of leaving open space and “clustering” the subdivided lots with a lot equivalent to the RS7.5 district. However, the cluster lot option is only available for the R and RS zoning districts, not the AG and AR2a districts.

This ordinance would allow developers to achieve a reduction in lot size in areas worthy of conservation when at least fifty percent of the land is designated as permanent open space or farmland. This ordinance does not modify the cluster lot option provisions in the zoning code. This ordinance differs from the cluster lot option in that fifty percent of the land would have to be left undeveloped, as opposed to the fifteen percent requirement for cluster lot subdivisions. In addition, the cluster lot option allows developers to set aside land that is not able to be developed because it is in the floodplain or because of steep topography. This ordinance requires that the most worthy areas be conserved, not just the leftover property frequently used in cluster lot subdivisions.

By taking advantage of this conservation subdivision provision and setting aside fifty percent of the total land area as open space, developers will be able to substantially reduce the minimum lot sizes and thus lower their costs. The land area must be held in a conservation easement to ensure that it will never be developed. The ordinance would require that the lots closest to neighboring developments be the largest. The further away a lot is from a neighboring property outside the  
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**ORDINANCE NO. BL2006-1046** (continued)

conservation subdivision, the smaller the lot could be. For example, the RS80 base zoning district requires a minimum lot size of 80,000 square feet. Under this ordinance, if the lot was 150-200 feet from a neighboring property, then the minimum lot size would be 20,000 square feet. The minimum lot sizes would increase the closer the property is to a neighboring property. Lots 50 feet or less from a neighboring property would not qualify for a reduction in the minimum lot size. It is important to note that this ordinance would not result in a density bonus. It would only allow for a reduction in minimum lot size.

This ordinance would also do away with the landscape buffer requirement along scenic arterials where a conservation subdivision provides a scenic easement of 50 feet or more. Otherwise, an artificial landscape buffer would have to be planted in an already natural area. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2006-1047** (LORING & MCLENDON) – This zoning text change would require that buildings proposed to be taller and/or closer to the street than the zoning code allows obtain a special exception from the board of zoning appeals (BZA). The zoning code currently requires that any building proposed to be taller and/or closer to the street or property line than the code allows obtain a variance from the BZA. In order for the BZA to lawfully grant a variance, the applicant must prove that compliance with the zoning code is not feasible due to the unique physical characteristics of the property, and that financial gain for the applicant is not the sole basis for granting the variance. It is often very difficult to show that the unique physical characteristics require the building to be taller, and that financial gain is not the motivating factor. By requiring developers to obtain a special exception rather than a variance in order to exceed the height and setback restrictions in the zoning code, the burden on the applicant would only be to provide evidence to the BZA that the proposed building will not adversely impact surrounding properties and will not detract from a strong pedestrian-friendly streetscape. This ordinance would not apply to single-family or two-family homes. This ordinance has been approved by the planning commission.

**ORDINANCE NO. BL2006-1048** (SUMMERS & BRILEY) – This zoning text change would increase the amount of notice required prior to public hearings held by the board of zoning appeals on requests for special exceptions and variances. The zoning code currently requires that notice be sent by certified mail to property owners located within 300 feet of the applicant's property not less than twenty-one days prior to the hearing. The code further requires that notices be mailed twenty-one days prior to public hearings held by the planning commission. This ordinance would increase the notice requirement for special exception and variance requests from the board of zoning appeals from twenty-one to forty-five days. A similar ordinance changing the notification period to sixty days failed to receive council approval in March 2006.

The planning commission staff recommends that the zoning code provisions requiring public hearings on special exceptions and variances to be held within 60 days of the application being deemed complete also be amended to address the longer notification period. This ordinance has been approved by the planning commission.